

**Citicorp Industrial Credit, Inc.**

9453-H  
A Citibank Affiliate  
399 Park Avenue  
New York, N.Y.  
10043  
RECORDATION NO. 9453-H Filed 1425  
OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION

1013K H  
RECORDATION NO. 1013K H Filed 1425

OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Citicorp Industrial Credit, Inc.  
Refinancing of Railcar Acquisition

Dear Sir:

Enclosed for recordation with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of the United States Code ("Section 11303") are one original and two counterparts of each of the following documents:

1. Mortgage dated as of October 1, 1979 (the "Mortgage") between Citicorp Industrial Credit, Inc., as Lender (the "Lender"), and C&H Railways, Ltd., as Borrower (the "Borrower"), which evidences, among other things, the mortgage and assignment as security by the Borrower to the Lender of the Borrower's right, title and interest in, to and under (a) certain railroad equipment (the "Equipment") described in Annex 1 to the Mortgage and all proceeds thereof; (b) a Lease Agreement made as of September 23, 1977 between Rex Railways, Inc., as Lessor, and the Lenawee County Railroad Company, Inc., as Lessee, which was recorded pursuant to Section 11303 on June 22, 1978 at 9:20 A.M. under Recordation No. 9453, as amended by an Equipment Schedule which was recorded pursuant to Section 11303 on February 26, 1979 at 11:20 A.M. under Recordation No. 9453-A, a First Amendment to Equipment Schedule which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 9453-B, a Second Amendment to Equipment Schedule which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 9453-G and which identifies the Borrower as the principal for whom Rex Railways, Inc. acts and who owns the Equipment (as so amended, the "Lease"), and all payments to become due thereunder; and (c) a Management Agreement dated as of February 15, 1979 (the "Management Agreement") between Rex Railways, Inc. and Skiva International, Inc. which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 9453-D, and all payments to become due thereunder. The

Counterparts — Mrs. Dolores M. Rodriguez

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INTERSTATE COMMERCE COMMISSION

10902-A  
RECORDATION NO. 10902-A Filed 1425

OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION

9-231A091  
No. 9-231A091  
Date OCT 18 1979  
Fee \$ 260.00  
ICC Washington, D. C.

10902-B  
RECORDATION NO. 10902-B Filed 1425

OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION

10902-C  
RECORDATION NO. 10902-C Filed 1425

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INTERSTATE COMMERCE COMMISSION

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New York, N.Y.  
10043

right, title and interest of the Borrower which is mortgaged and assigned as security pursuant to the Mortgage was acquired from Skiva International, Inc. pursuant to an Assignment dated March 15, 1979 (the "Assignment") which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation Nos. 9453-F and 10131-F.

2. Guaranty and Agreement dated as of October 1, 1979 among Citicorp Industrial Credit, Inc., Rex Railways, Inc. and Rex-Noreco, Inc. which evidences, among other things, the guarantee by Rex Railways, Inc. and Rex-Noreco, Inc., severally and jointly, of certain of the obligations of the Borrower under the Mortgage and the mortgage and assignment as security by Rex Railways, Inc. to the Lender of its right, title and interest in, to and under the Lease and all payments to become due thereunder.

3. Consent and Agreement dated as of October 1, 1979 between the Lenawee County Railroad Company, Inc. and Citicorp Industrial Credit, Inc., which evidences, among other things, the consent of the Lenawee County Railroad Company to the mortgage and assignment as security made by the Borrower to the Lender pursuant to the Mortgage.

4. Consent and Agreement dated as of October 1, 1979 between Skiva International, Inc. and Citicorp Industrial Credit, Inc., which evidences, among other things, the consent of Skiva International, Inc. to the mortgage and assignment as security made by the Borrower to the Lender pursuant to the Mortgage; the right, title and interest subject to such mortgage and assignment having been assigned to the Borrower by Skiva International, Inc. pursuant to the Assignment.

5. Release and Agreement dated as of October 1, 1979 between Twitter, Inc. and Citicorp Industrial Credit, Inc., which evidences, among other things, the release by Twitter, Inc. to the Borrower of all of its right, title and interest in, to and under a Conditional Sale Agreement dated as of February 13, 1979 among Twitter, Inc., as Vendor, Rex Railways, Inc., as Manager, and Skiva International, Inc., as Vendee, which was recorded pursuant to Section 11303 on February 22, 1979 at 4:40 P.M. under Recordation No. 10131, as amended by Amendment Agreement #1 dated as of February 13, 1979 which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 10131-B, including all of its right, title and interest in and to the Equipment.

6. Amendment dated as of October 1, 1979 between Rex Railways, Inc. and C&H Railways, Ltd., which amends the

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New York, N.Y.  
10043

Management Agreement; the rights and obligations of C&H Railways, Ltd. under the Management Agreement having been acquired from Skiva International, Inc. pursuant to the Assignment.

The addresses of the parties to the enclosed documents are as follows:

1. Citicorp Industrial Credit, Inc., 399 Park Avenue, New York, New York 10043.

2. C&H Railways, Ltd., 1250 Broadway, New York, New York 10018.

3. Rex Railways, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.

4. Rex-Noreco, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.

5. Twitter, Inc., c/o Rex Railways, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.

6. Lenawee County Railroad Company, Inc., 708 East Michigan Street, Adrian, Michigan 49221.

7. Skiva International, Inc., 1250 Broadway, New York, New York 10018.

The Equipment covered by the enclosed documents consists of 100 70-ton, 50'6" general purpose box cars, manufactured by Pullman Standard Division of Pullman Incorporated, having the mechanical designation of the American Association of Railroads "XM", bearing the road numbers of the Lenawee County Railroad Company, Inc. LCRC 2001 through 2100, inclusive, and bearing the legend "Ownership Interest Subject to a Security Agreement Filed under the Interstate Commerce Act."

Also enclosed is a check in the amount of \$260 for payment to the Interstate Commerce Commission of the required filing fees of \$10 for the Amendment to the Management Agreement and \$50 for each of the other five documents which are enclosed.

Please accept the enclosed documents for recordation and make the appropriate entries to the Index of Documents in order to reflect the assignments, transfers, releases and amendments which are effected by such documents and described above. Please return the original of each of the enclosed documents, stamped with a recordation number, together with the usual letter of the Commission confirming recordation, to the delivering messenger of our counsel,



A Citibank Affiliate

399 Park Avenue  
New York, N.Y.  
10043 New York 10005, for transmittal to the undersigned.

Very truly yours,

CITICORP INDUSTRIAL CREDIT,  
INC.

By W. H. Bergen  
Title Vice President

*Marguerite Kahn*  
*(212) 422-6767*

**Citicorp Industrial Credit, Inc.**

*Dolores Rodriguez*  
*298-5970*

10902-4

RECORDATION NO. .... Filed 1423

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INTERSTATE COMMERCE COMMISSION

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**GUARANTY AND AGREEMENT**

Dated as of October 1, 1979

among

**REX RAILWAYS, INC.,**

**REX-NORECO, INC.**

and

**CITICORP INDUSTRIAL CREDIT, INC. /**

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**(COVERING 100 GENERAL PURPOSE BOXCARS)**

**GUARANTY AND AGREEMENT** dated as of October 1, 1979 among **REX RAILWAYS, INC.** (the **Manager**), **REX-NORECO, INC.** (Rex-Noreco, and Rex-Noreco and the Manager shall be herein referred to as the **Guarantors** and each as a **Guarantor**) and **CITICORP INDUSTRIAL CREDIT, INC.** (the **Lender**).

**W I T N E S S E T H :**

**WHEREAS**, Twitter, Inc. (the **Vendor**), the Manager and, through an Assignment dated March 15, 1979 (the **Assignment**) from Skiva International, Inc. (**Skiva**), C&H Railways, Ltd. (the **Borrower**) are parties to a Conditional Sale Agreement dated as of February 13, 1979 as amended by Amendment Agreement #1 dated as of February 13, 1979 (as so amended, the **Conditional Sale Agreement**), concerning the railroad equipment described in Annex A thereto (the **Equipment**);

**WHEREAS**, the Manager and, through the Assignment, the Borrower are parties to a Management Agreement dated as of February 13, 1979 (the **Management Agreement**) and the Manager and the Lenawee County Railroad Company, Inc. (the **Lessee**) are parties to a Lease Agreement made as of September 23, 1977 and amended by the Equipment Schedule executed on October 4, 1978 by the Manager and on October 9, 1978 by the Lessee, referring to the Equipment, and the First and Second Amendments to Equipment Schedule (as so amended, the **Lease**);

**WHEREAS**, the Vendor has assigned substantially all of its right, title and interest in, to and under the Conditional Sale Agreement to The Provident Bank (**Provident**) pursuant to an Agreement and Assignment dated as of February 13, 1979;

**WHEREAS**, the Borrower desires to prepay the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the **Conditional Sale Indebtedness**), and all other amounts owing Provident under the Conditional Sale Agreement;

**WHEREAS**, the Borrower desires the Lender to loan to it an amount equal to the outstanding Conditional Sale Indebtedness, plus accrued interest thereon, pursuant to the terms of a Mortgage dated as of October 1, 1979 between the Lender and the Borrower (the **Mortgage**, and unless otherwise defined herein, all terms used herein shall have the respective meanings assigned to them in the Mortgage), which loan (the **Loan**) will be secured by a mortgage of the Collateral therein described, which includes Equipment, the Borrower's rights in, to and under the Lease and the Management Agreement and the Manager's rights in, to and under the Lease; and

**WHEREAS**, the Guarantors desire to have the Lender make the Loan to the Borrower pursuant to the terms of the Mortgage, and the Lender is willing to make such Loan pursuant to the Mortgage upon the condition, among others, that each Guarantor execute and deliver this Guaranty and Agreement.

**NOW, THEREFORE,** in consideration of the agreements of the Lender under the Mortgage and the premises hereof and thereof and other good and valuable consideration, the parties hereto agree as follows:

**SECTION 1. Guaranty of Payment.** The Guarantors, jointly and severally, hereby irrevocably and unconditionally guaranty to the Lender the due and punctual payment of all moneys and amounts (including, without limitation, expenses and indemnities) payable by the Borrower pursuant to the Mortgage or under the Note, as defined in the Mortgage, when and as the same shall become due and payable (whether at stated maturity or by required prepayment or by declaration, acceleration or otherwise) pursuant to and in accordance with the terms of the Mortgage. Such guaranty is an absolute, present and continuing guaranty of payment and not of collection and is in no way conditional or contingent upon any attempt to collect from the Borrower or any other guarantor of the obligations of the Borrower, including the other Guarantor, or upon any other action, occurrence or circumstance whatsoever. In case the Borrower shall fail so to pay any such principal, interest or other amount, the Guarantors shall pay the same, in lawful money of the United States of America at the place specified in the Mortgage, together with interest, at the rate applicable to overdue payments under the Mortgage, on any overdue principal (including any overdue prepayment of principal) and (to the extent permitted under applicable law) on any overdue installment of interest, and on any other overdue amount, from the date the same became due and payable to the date of payment. Each Guarantor shall be individually obligated to pay all amounts owing pursuant to this Section and Section 15 of this Guaranty and Agreement.

**SECTION 2. Guarantors' Obligations Absolute and Unconditional.** The obligations of each Guarantor hereunder shall be absolute and unconditional, irrespective of the validity, regularity or enforceability of the Mortgage or any other agreement referred to herein or therein, shall not be subject to any counterclaim, setoff, deduction or defense based upon any claim that either Guarantor may have against the Lender hereunder or otherwise, and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by any circumstance or condition whatsoever (whether or not the Guarantor shall have any knowledge or notice thereof), including, without limitation: (a) any amendment or modification of or supplement to the Mortgage or any other agreement referred to herein or therein which does not modify in any material respect the obligations of the Guarantors hereunder or which each Guarantor has approved, in writing, or any assignment or transfer of any of such agreements or of any interest therein, or any furnishing or acceptance of additional security, or any release of any security, for obligations of the Borrower under the Mortgage or otherwise; (b) any waiver, consent, extension, indulgence or other action or inaction under or in respect of any such agreement or instrument, or

any exercise or non-exercise of any right, remedy, power or privilege under or in respect of any such agreement or instrument or this Guaranty and Agreement; (c) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to the Borrower or its properties or its creditors; (d) any merger or consolidation of the Borrower into or with any other corporation or any sale, lease or transfer of any or all of the assets of the Borrower to any other person; (e) any failure on the part of the Borrower for any reason to perform or comply with any of the terms of any other agreement with one or both Guarantors; or (f) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. The Guarantors, severally and jointly, covenant that their obligations hereunder will not be discharged except by complete performance of the obligations guaranteed hereby.

**SECTION 3. Waiver.** Each Guarantor unconditionally waives (a) notice of any of the matters referred to in Section 2 hereof, (b) all notices which may be required by statute, rule of law or otherwise, other than those notices specifically required by the terms of this Guaranty and Agreement or the Mortgage, to preserve any rights of the Lender against such Guarantor, including, without limitation, presentment to or demand of payment from the Borrower with respect to any amount due, notice to the Borrower of default or protest for non-payment or dishonor, (c) any right to the enforcement, assertion or exercise by the Lender of any right, power or remedy conferred in the Mortgage and (d) any requirement of diligence on the part of the Lender.

**SECTION 4. Representations, Warranties and Agreements of the Manager.**

(a) **Representations and Warranties.** The Manager represents and warrants that:

(1) **Due Organization.** It is a corporation duly organized and validly existing in good standing under the laws of the State of New Jersey and had the corporate power and authority to enter into the Lease and the Management Agreement at the time it entered into such agreements and has the corporate power and authority to enter into this Guaranty and Agreement and an amendment to the Management Agreement dated as of October 1, 1979 between the Manager and the Borrower (the **Management Agreement Amendment**) and has the corporate power and authority to perform its obligations under this Guaranty and Agreement, the Lease, the Management Agreement and the Management Agreement Amendment.



(2) **Due Authorization and Enforceability.** This Guaranty and Agreement, the Lease, the Management Agreement and the Management Agreement Amendment have been duly authorized, executed and delivered by the Manager and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of it, enforceable in accordance with their respective terms.

(3) **No Violation.** The execution and delivery by the Manager of this Guaranty and Agreement, the Lease, the Management Agreement and the Management Agreement Amendment are not, and the performance by it of its obligations under each as well as, through the Management Agreement Amendment, the Mortgage will not be, inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other Federal, state, local or Canadian governmental authority or agency, except such as have been obtained, given or accomplished.

(4) **Title to the Equipment.** On the Closing Date, each Unit of Equipment and the Manager's right, title and interest in and to the Lease will be free and clear of all claims, liens, security interests and other encumbrances of any nature (**Liens**) arising by, through or under the Manager other than the rights of the Manager under the Management Agreement, as amended by the Management Agreement Amendment, the rights of the Lessee under the Lease, and the rights of the Lender under the Mortgage, the Note and this Guaranty and Agreement.

(5) **Performance Will Not Create Liens.** The performance by it of its obligations under this Guaranty and Agreement, the Lease, the Management Agreement and the Management Agreement Amendment (and, through the Management Agreement Amendment, the Mortgage) will not subject the Equipment, the Lease or the Management Agreement, as amended by the Management Agreement Amendment, to any Lien (other than the Liens provided in the Mortgage and this Guaranty and Agreement) under any indenture, mortgage, contract or

other instrument to which it is a party or by which it is bound.

(6) **No Litigation.** There are no actions, suits, proceedings or investigations pending, or to the knowledge of the Manager, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Guaranty and Agreement, the Mortgage, the Lease, the Management Agreement or the Management Agreement Amendment, or which might affect the ability of the Manager to perform its obligations hereunder or thereunder, or which might result, either individually or in the aggregate, in a material adverse change in the business, operations, affairs or condition of the Manager, except as previously disclosed in writing to the Lender.

(7) **Full Disclosure.** There is no fact known to the Manager which materially adversely affects or in the future may (so far as the Manager can now foresee) materially adversely affect the business, operations, earnings, affairs, prospects or condition of the Manager or any of its properties or assets which has not been disclosed herein or in the other documents, certificates and statements furnished to the Lender in writing specifically for use in connection with the transactions contemplated by the Mortgage.

(8) **Design of Equipment.** The design, quality, and component parts of each Unit of the Equipment conform to all Department of Transportation and Interstate Commerce Commission (hereinafter called the ICC) requirements and specifications and to all standards recommended by the Association of American Railroads (hereinafter called the AAR) reasonably interpreted as being applicable to railroad equipment of the character of such Unit, and each such Unit was new railroad equipment at the time delivered to the Borrower under the Conditional Sale Agreement.

(9) **Status of Equipment.** The 100 box cars described in and bearing the identification numbers set forth in Annex 1 to the Mortgage are subject to the Management Agreement and all of the terms and provisions thereof and are currently under lease to the Lessee pursuant to the Lease and are subject to all of the terms and provisions thereof.

(10) **Performance of Obligations.** The Manager has complied with all terms and provisions of the

Lease and the Management Agreement, has performed all obligations and taken all actions required to be performed or taken by it under the Lease and Management Agreement, respectively, and has not transferred or encumbered its interest in the Lease.

(b) **Agreements.** The Manager agrees and covenants that:

(1) **Delivery of Certificate.** On the Closing Date the Manager shall deliver to the Lender a certificate to the effect that the representations and warranties of the Manager set forth in this Guaranty and Agreement are true and correct in all material respects on and as of such Closing Date with the same effect as though made on and as of such Closing Date, that no breach by the Manager in the performance of its duties under the Management Agreement, as amended by the Management Agreement Amendment, which shall or may have a material adverse effect on the revenues generated by the Equipment shall have occurred and be continuing on such Closing Date, and that attached thereto are true and complete copies of the Conditional Sale Agreement, the Lease, the Management Agreement and the Consent and Agreement to the Management Agreement Assignment, which prior to the prepayment of the Conditional Sale Indebtedness and payment to Provident of the amounts referred to in subparagraph (10) of paragraph (a) of Section 12 of the Mortgage are in full force and effect on the Closing Date and have not been modified or amended in any respect.

(2) **Delivery of Opinion.** On the Closing Date, the Manager shall deliver to the Lender a favorable opinion of counsel, dated the Closing Date, to the effect set forth in subparagraphs (1) through (6) of paragraph (a) of this Section, which opinion may be subject to the qualifications set forth in paragraph (b) of Section 12 of the Mortgage.

(3) **Restriction on Assignment.** So long as any amounts due and payable by the Borrower under the Mortgage remain unpaid and outstanding, the Manager shall not assign, transfer or encumber its right, title and interest in, to or under the Lease and the Management Agreement or any of the payments due or to become due thereunder other than as provided in Section 6 hereof.

**SECTION 5. Representations, Warranties and Agreements of Rex-Noreco.**

**(a) Representations and Warranties.** Rex-Noreco represents and warrants that:

**(1) Due Organization.** It is a corporation duly organized and validly existing in good standing under the laws of the State of New Jersey and has the corporate power and authority to enter into and perform its obligations under this Guaranty and Agreement.

**(2) Due Authorization and Enforceability.** This Guaranty and Agreement has been duly authorized, executed and delivered by Rex-Noreco and, assuming due authorization, execution and delivery by the other parties hereto, is a legal, valid and binding obligation, enforceable in accordance with its terms.

**(3) No Violation.** The execution and delivery by Rex-Noreco of the Guaranty and Agreement is not, and the performance by it of its obligations under it will not be, inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other Federal, state, local or Canadian governmental authority or agency, except such as have been obtained, given or accomplished.

**(4) Title to the Equipment.** Each Unit of Equipment is free and clear of all claims, liens, security interests and other encumbrances of any nature (Liens) arising by, through or under Rex-Noreco.

**(5) Performance Will Not Create Liens.** The performance by it of its obligations under this Guaranty and Agreement will not subject the Equipment, the Lease or the Management Agreement, as amended by the Management Agreement Amendment, to any Lien (other than the Liens provided in the Mortgage) under any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound.

(6) **No Litigation.** There are no actions, suits, proceedings or investigations pending, or to the knowledge of Rex-Noreco, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Guaranty and Agreement, or which might affect the ability of Rex-Noreco to perform its obligations hereunder, or which might result, either individually or in the aggregate, in a material adverse change in the business, operations, affairs or condition of Rex-Noreco, except as previously disclosed in writing to the Lender.

(7) **Full Disclosure.** There is no fact known to Rex-Noreco or any of its subsidiaries which materially adversely affects or in the future may (so far as Rex-Noreco or any of its subsidiaries can now foresee) materially adversely affect the business, operations, earnings, affairs, prospects or condition of Rex-Noreco or any of its subsidiaries or any of their respective properties or assets which has not been disclosed herein or in the other documents, certificates and statements furnished to the Lender in writing specifically for use in connection with the transactions contemplated hereby and by the Mortgage.

(b) **Agreements.** Rex-Noreco agrees and covenants that:

(1) Rex-Noreco shall furnish to the Lender:

(A) promptly upon their becoming available, a copy of each regular or periodic report and any registration statement or prospectus filed by Rex-Noreco or the Manager with the Securities and Exchange Commission or any successor agency, including, but not limited to, Rex-Noreco's Annual Report on Form 10-K, Quarterly Report on Form 10-Q and any Current Reports on Form 8-K, **provided, however,** that if at any time Rex-Noreco is not required to file periodic reports pursuant to the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, it shall furnish to the Lender, in lieu of the information set forth in this subparagraph (A), the financial information set forth in paragraph(b)(2) of this Section 5.

(B) within 90 days after the close of each fiscal year of Rex-Noreco, a certificate of the chief financial officer of Rex-Noreco stating that he has reviewed the activities of Rex-Noreco and the Manager,

and to the best of his knowledge, (i) no Default or Event of Default, as defined in the Mortgage, has occurred during such period, and (ii) if such Default or Event of Default has occurred, specifying the nature and period of continuance thereof and the actions which Rex-Noreco or the Manager has taken or proposes to take with respect thereto;

(C) upon the occurrence of any Event of Default under the Mortgage of which Rex has knowledge, a certificate of an authorized officer of Rex-Noreco stating that such an Event of Default has occurred, the nature and period of continuance thereof, and the actions which Rex-Noreco or the Manager has taken or proposes to take with respect thereto; and

(D) with reasonable promptness, any other information which the Lender shall reasonably request.

(2) If at any time Rex-Noreco is not required to file periodic reports pursuant to the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, Rex-Noreco shall furnish to the Lender in lieu of the requirements of paragraph (b)(1)(A) of this Section the following:

(A) within 90 days after the close of each fiscal year of Rex-Noreco, a consolidated balance sheet and consolidated statement of income of Rex-Noreco as at the end of such year, setting forth in each case the comparable figures for the previous fiscal year, accompanied by an opinion of independent certified public accountants, which opinion shall state that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied, that the examination by such accountants has been made in accordance with generally accepted auditing standards and that such accountants have obtained no knowledge of the occurrence of any Default under the Mortgage; and

(B) within 45 days after the end of the first three fiscal quarters of Rex-Noreco, a consolidated balance sheet and consolidated statement of income of Rex-Noreco as at the end of each such quarter, certified as complete and correct, subject to changes resulting from year-end adjustments, by the principal financial officer of Rex-Noreco;

(3) On the Closing Date, Rex-Noreco shall execute and deliver to the Lender a certificate, dated the Closing Date, to the effect that the representations and warranties of Rex-Noreco set forth in this Guaranty and Agreement are true and correct in all material respects on and as of such Closing Date with the same effect as though made on and as of such Closing Date.

(4) On the Closing Date, Rex-Noreco shall deliver to the Lender a favorable opinion of counsel, dated the Closing Date, to the effect set forth in subparagraphs (1) through (6) of paragraph (a) of this Section, which opinion may be subject to the qualifications set forth in paragraph (b) of Section 12 of the Mortgage.

**SECTION 6. Covenants of the Guarantors.** Rex-Noreco and the Manager each hereby covenant and agree that so long as any amount, the payment of which is guaranteed hereby, is unpaid and outstanding:

(a) Except as set forth in paragraph (b) of this Section, Rex-Noreco and the Manager shall each keep in full force and effect its existence as a corporation, its good standing as a duly qualified or licensed foreign corporation authorized to do business in each jurisdiction where the conduct of its business requires such qualification, and such of its other rights and franchises as are necessary or desirable for the advantageous conduct of its business.

(b) Neither Rex-Noreco nor the Manager shall consolidate with any other corporation or merge into any other corporation or sell or otherwise transfer all or substantially all of its property and assets to any other corporation (any such corporation resulting from such consolidation or into which Rex-Noreco or the Manager shall have been merged or to which such sale or other transfer shall have been made being herein called the **Successor Corporation**), unless:

(i) the Successor Corporation shall be a corporation incorporated under the laws of any state of the United States of America;

(ii) the Successor Corporation shall expressly assume the due and punctual performance of all the obligations and liabilities of whichever of Rex-Noreco or the Manager is its predecessor corporation under this Guaranty and Agreement and shall consent and agree in writing (by an instrument in form and substance satisfactory to the Lender) to assume and

perform all of the obligations and liabilities of its predecessor corporation hereunder; **provided, however,** that no such sale or other transfer shall release Rex-Noreco or the Manager from any of their respective obligations or liabilities under this Guaranty and Agreement and the predecessor corporation shall remain liable, severally but not jointly, with the Successor Corporation;

(iii) the Successor Corporation shall not immediately thereafter be in breach of any provision of this Guaranty and Agreement; and

(iv) the Lender shall consent to such consolidation, merger or transfer of assets, which consent shall not be unreasonably withheld.

(c) Each Guarantor shall duly pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges levied upon it or against its properties or assets or any of its franchises, business, income or profits by any Federal, state or local government or taxing authority in the United States prior to the date on which any penalty or interest accrues thereon, unless and to the extent that such tax, assessment or charge shall be contested in good faith and by appropriate proceedings by such Guarantor.

(d) In the event that either Guarantor pays to the Lender amounts the payment of which is guaranteed hereunder, such Guarantor shall, in writing at the time of the payment, identify the source and application of such payment.

#### **SECTION 7. Assignment as Security.**

(a) As additional security for the Loan to be made by the Lender pursuant to the Mortgage, the Manager hereby mortgages, assigns and transfers unto the Lender and grants the Lender a security interest in all of the Manager's right, title and interest, both as agent and in its individual capacity, in and to the Lease and all payments due or to become due thereunder.

(b) Notwithstanding the provisions of paragraph (a) of this Section, the Manager shall be entitled, so long as no Default or Event of Default (as defined in Section 22 of the Mortgage) has occurred and is continuing and subject to the terms and provisions of Sections 18 and 22 of the Mortgage, to exercise all of its rights and obligations under the Lease and the Management Agreement.



(c) Notwithstanding any provision of this Guaranty and Agreement or the Mortgage which may be to the contrary, the Manager shall remain fully liable under the Lease to perform all of its obligations thereunder, and the Lender, its successors or assigns, shall have no obligation or liability under the Lease by reason of or arising out of this Guaranty and Agreement or the Mortgage, nor shall the Lender, its successors, or assigns, be required or obligated in any manner to perform or fulfill any obligation of the Manager under or pursuant to the Lease, or to make any payment received by it, its successors or assigns, or to press or file any claim or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it, its successors or assigns, or to which it, its successors or assigns, may have been entitled at any time or times, **provided that** the Lender shall, as soon as practicable, fully inform the Manager promptly in writing of any such matters of which it has actual knowledge.

(d) The Manager does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as any amount owing under the terms of the Mortgage, the Notes or this Guaranty remains unpaid and outstanding, any of its right, title or interest in or to the Lease to anyone other than the Lender, its successors or assigns.

(e) The assignment effected by this Section shall take effect on the Closing Date and the powers and authorities granted to the Lender, its successors or assigns, herein, having been given for valuable consideration, are hereby declared to be irrevocable.

(f) In the event that the Lender has actual notice of any event of default under the Lease, the Lender will give prompt notice thereof to the Manager.

(g) The Manager agrees to furnish to the Lender copies of all notices, statements, documents, or schedules received by it under the Lease and the Lender shall cause similar copies to be delivered to the Manager if received by the Lender.

**SECTION 8. Extension of Term.** If the period for repayment of the Loan should be extended pursuant to Section 8 of the Mortgage, the obligations of each Guarantor hereunder shall be extended and modified, without further act of any party, so as to constitute a guaranty, subject to the provisions of this Guaranty and Agreement, of the due and punctual payment of all amounts payable by the Borrower under the Mortgage as modified by the provisions of Section 8 thereof. The consents of the Manager and Rex-Noreco given

under the terms of Section 8 of the Mortgage shall constitute the consent of each such party to the extension and modification of their obligations under this Guaranty and Agreement.

**SECTION 9. Purchase Option.** Within 30 days after the Lender gives written notice of any termination of the Management Agreement or the Lease pursuant to clause (1) of Section 22(a) of the Mortgage, or any declaration of the unpaid principal balance of the Loan due and payable pursuant to clause (2) of Section 22(a), either Guarantor may, upon not less than 5 days prior written notice to the Lender, purchase the Lender's rights and interest in, to and under the Mortgage and Section 7 hereof for an amount equal to the unpaid principal balance of the Loan as of the date of such purchase plus accrued interest to, but not including, such date plus any other amounts then due and owing the Lender under the Mortgage. Upon due payment to the Lender of the amount owing pursuant to this paragraph, the Lender shall transfer to the purchasing party (without representations or warranties) the Note then outstanding and all of its rights (except those to indemnification for losses, damages, injuries, liabilities, claims and demands, and expenses in connection therewith, which may be suffered or incurred by the Lender) in, to and under the Mortgage and Section 7 hereof.

**SECTION 10. Cure Rights.** The failure of the Borrower to make payment of any amount due under the Mortgage shall not constitute an Event of Default under subparagraph (i) of paragraph (a) of Section 22 of the Mortgage if either of the Guarantors pays to the Lender the full amount due and payable by the Borrower within 5 days after the Lender gives notice of such failure to make payment to such Guarantor pursuant to the Mortgage and such payment is made in compliance with all of the terms and provisions of the Mortgage.

**SECTION 11. Remedies.** In case the Guarantors shall fail forthwith to pay upon demand of the Lender any amounts due pursuant to the provisions hereof, the Lender shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree against either Guarantor or both Guarantors for the full amount due and collect in the manner provided by law out of the property of either Guarantor or both Guarantors, wherever situated, the monies adjudged or decreed to be payable.

**SECTION 12. Subrogation.** Upon payment in full of all amounts owing to the Lender pursuant to the Mortgage, each Guarantor shall be subrogated to the rights of the Lender under the Mortgage to receive payments and distributions thereunder until each Guarantor shall have been paid in full an amount equal to the aggregate of all sums paid by such Guarantor pursuant to this Guaranty and Agreement.

**SECTION 13. Consent to Prepayment, Loan and Assignment.**

Rex-Noreco and the Manager each hereby consents, notwithstanding any of the terms or provisions of the Lease and the Management Agreement, as amended by the Management Agreement Amendment, which may be to the contrary, to all of the terms and provisions of the Mortgage and to the transactions contemplated thereby, including, but not limited to, the prepayment by the Borrower of the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement, and the mortgage of and grant of a security interest to the Lender in the Collateral.

**SECTION 14. Assignment of Mortgage by the Lender.**

The Lender may assign, without the consent of the Borrower, the Manager, Rex-Noreco or any other party, any or all of its rights and obligations in, to and under the Lease, the Management Agreement, the Management Agreement Amendment, the Note and the Mortgage. In the event of any such assignment and upon written notice to the Borrower, the Manager and the Lessee, the Lender's assignee shall, to the extent of such assignment, be entitled to the benefits of, and to receive and enforce performance of, all of the covenants and agreements to be performed (i) by the Borrower under the Mortgage and the Note as though the Lender's assignee were named therein as the Lender, (ii) by the Manager under the Management Agreement, as amended by the Management Agreement Amendment, as though the Lender's assignee were named therein as "Owner" and (iii) by the Lessee under the Lease, as though the Lender's assignee were named therein as either "RRI", "C&H" or the "Manager"; and be subject to all of the duties and obligations of the Lender hereunder.

**SECTION 15. Costs and Expenses.**

The Guarantors shall pay all costs and expenses (including, without limitation, attorneys' fees and expenses) reasonably incurred by or on behalf of the Lender in enforcing the obligations of the Guarantors under this Guaranty and Agreement.

**SECTION 16. Security Deposit.**

Rex-Noreco and the Manager hereby acknowledges that Rex-Noreco and/or the Manager have paid to the Lender, on behalf of the Borrower, a non-refundable security deposit in the amount of \$26,000. The Lender shall retain \$5,000 of such deposit as a non-refundable commitment fee, which amount shall not be applied to or reduce the obligations of the Borrower under any Section of the Mortgage. If the Closing Date is a date after October 16, 1979, the Lender shall retain an additional \$10,000 of such deposit as a non-refundable commitment fee, which additional amount shall not be applied to or reduce the obligations of the Borrower under any Section of the Mortgage. In the event the Lender makes the Loan to the Borrower pursuant to the Mortgage, the portion of such deposit not retained pursuant to the second and third sentences of this Section shall be applied by the Lender, on behalf of the Borrower, to the first installment of the repayment of the Loan. In the event the Lender does not make the Loan to the Borrower, the portion of such deposit not retained pursuant to the second and third

sentences of this Section shall be retained by the Lender as liquidated damages for its costs and expenses (exclusive of legal fees which Rex-Noreco and the Manager have guaranteed to pay) in connection with the negotiation of the transactions contemplated hereby.

**SECTION 17. Termination of Agreements.** Rex-Noreco and the Manager, severally and not jointly, hereby acknowledge that upon the prepayment by the Borrower to Provident of the Conditional Sale Indebtedness and the payment to Provident of the amounts set forth in subparagraph (10) of paragraph (a) of Section 12 of the Mortgage, the Conditional Sale Agreement, the Finance Agreement, dated as of February 13, 1979, among Provident, the Vendor, the Manager, Skiva and Rex-Noreco, the Guaranty and Agreement, dated as of February 13, 1979, between Provident and Rex-Noreco, the Lease Agreement Assignment and the Management Agreement Assignment shall be terminated without further act of any party and shall be of no further force and effect.

**SECTION 18. Amendments.** The terms of this Guaranty and Agreement may not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by each of the parties hereto, or their successors and assigns.

**SECTION 19. Successors and Assigns.** This Guaranty and Agreement shall be binding upon the parties hereto and inure to the benefit of such parties and, to the extent permitted hereby, their respective successors and assigns. The Lender, or any assignee of the Lender may assign its right, title and interest in, to and under this Guaranty and Agreement without the consent of either of the Guarantors. No assignment of this Guaranty and Agreement shall increase the obligations of the Guarantors hereunder, and the Guarantors shall be under no obligation to any assignee except upon written notice of such assignment. The rights and obligations of each Guarantor hereunder shall not be assignable except pursuant to the provisions of Section 6 hereof.

**SECTION 20. Survival of Agreements.** All agreements, representations and warranties of each Guarantor contained herein or made in writing by either of the Guarantors in connection with the transactions contemplated hereby shall survive the execution and delivery of this Guaranty and Agreement and shall continue in effect as long as any obligations of the Borrower under the Mortgage are unpaid and outstanding.

**SECTION 21. Notices.** Any notice required or permitted to be given by either party hereunder shall be deemed to have been given when deposited in the United States mail, first-class postage prepaid, and addressed (a) if to the Manager or to Rex-Noreco, to 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632 and (b) if to the Lender, to 399 Park Avenue, New York, New York 10043, Attention: Manager, Contract Administration, or to such other address as each such party shall hereafter furnish to the other party in writing.

**SECTION 22. Choice of Forum.** The Manager, Rex-Noreco and the Lender each, to the fullest extent permitted by law, (a) designates the United States District Court for the Southern District of New York, as a forum where any and all matters pertaining to this Guaranty and Agreement may be adjudicated, and (b) by the foregoing designation, consents to the jurisdiction and venue of such Court for the purpose of adjudicating any and all matters pertaining to this Guaranty and Agreement. Each party hereto not having an agent for service of process of record with the Secretary of State of the State of New York hereby irrevocably appoints the Secretary of State of the State of New York as the agent for service of process in any proceeding instituted hereunder and each party hereto agrees that service of process upon such agent, in accordance with the then-prevailing and applicable law as hereinabove agreed to, with a copy of such summons or other instrument mailed to such party by United States registered mail at the address specified in Section 21 hereof, shall, upon receipt by such party, constitute proper service on such party for all purposes without objections of any kind whatsoever. Notwithstanding the provisions of this paragraph, any party hereto shall also be entitled to institute legal proceedings to adjudicate matters pertaining to this Guaranty and Agreement against the other in any other competent court.

**SECTION 23. Miscellaneous.**

(a) **Execution.** This Guaranty and Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which, when so executed and delivered, shall constitute a single instrument, but the counterpart or counterpart set, which shall be marked "Original", delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Lender shall be deemed the original counterpart and all other counterparts hereof shall be deemed duplicates thereof and shall be marked "Duplicate". Although this Guaranty and Agreement is dated as of the date first above written for convenience, the actual dates of the execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto.

(b) **Governing Law.** This Guaranty and Agreement shall be construed in accordance with and governed by the laws of the State of New York; **provided, however,** that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303, such additional rights

arising out of the filing, recording, registering, or depositing of this Guaranty and Agreement and any rights arising out of the marking on the Units of Equipment, as such terms are defined in the Conditional Sale Agreement.

(c) **Headings.** The headings in this Guaranty and Agreement are for the purpose of reference only and shall not limit or define the provisions hereof.

**IN WITNESS WHEREOF,** the parties hereto have caused this Guaranty and Agreement to be executed by their respective duly authorized officers on the respective dates set forth below.

**REX RAILWAYS, INC.,**  
as Manager and a Guarantor

By Robert M. Shuck

Title: PRES

Date: 10/16/79

Attest: Doris Wilson

[Seal]

Asst. Secy.

**REX-NORECO, INC.,**  
as a Guarantor

By Monica Fabian

Title: Pres.

Date: 10/16/79

Attest: Doris Wilson

[Seal]

Asst. Secy.

CITICORP INDUSTRIAL CREDIT, INC.

By W. H. Bergen

Title: Vice President

Date: 10/16/79

Attest: Kenneth C. Posh

[Seal]



County of Dergen )

On this 16 day of September, 1979, before me personally appeared Robert W. Gruber, to me personally known, who being by me duly sworn, says that he is the Pres. of Rex Railways, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public  
RUBIN SCHERTZ  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 4, 1982

[Notarial Seal]

County of *Bergen* )

On this 16 day of September, 1979, before me personally appeared Mark A. Sauter, to me personally known, who being by me duly sworn, says that he is the Pres. of Rex-Noreco, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public  
RUBIN SCHERTZ  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 4, 1982

[Notarial Seal]



State of New York )  
County of New York ) SS.:

On this 16<sup>th</sup> day of October, 1979, before me personally appeared W. H. Bergen, to me personally known, who being by me duly sworn, says that he is the VP of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Patrice A. Marchese  
Notary Public

[Notarial Seal]

PATRICE A. MARCHESE  
Notary Public, State of New York  
No. 62-4603611  
Qualified in Bronx County  
Certificate filed in New York County  
Commission Expires April 22, 1981